



Transportation
Finance
Issues: .08 First offense law

.08 First Offense OWI law Wisconsin Department of Transportation (February 2003)

Overview

The U.S. DOT's 2001 Appropriation Act (HR 4475) requires states to lower the legal limit for an OWI first offense to .08 BAC (blood alcohol concentration) by September 30, 2003, in order to receive the full share of federal highway funds.

Wisconsin faces two deadlines for certifying a .08 law (under proposed federal regulations expected to be finalized shortly):

July 15, 2003

Enactment of conforming legislation by this date would qualify Wisconsin for an incentive grant in FY 2003, and would avoid the withholding of federal highway funds in FY 2004.

September 30, 2003

Enactment of conforming legislation by this date (but after July 15) would not qualify Wisconsin for an incentive grant, but would avoid the withholding of federal highway funds.

The federal withholding would cost Wisconsin nearly \$8 million in federal highway aid in 2004, increasing in annual increments to an estimated penalty of more than \$38 million by 2008.

- The potential loss of federal highway construction funds for Wisconsin for the five-year period from 2004 - 2008 is estimated to be \$125 million.

In addition, Wisconsin has not been eligible to apply for more than \$15 million in incentive funds (for states enacting .08 laws since 1998) available for any use, including highway construction. The state could be eligible for an estimated \$3.1 million in 2003 incentive funds.

35 states (plus the District of Columbia and Puerto Rico) have enacted first offense .08 laws.

(See "U.S. Per Se BAC Limits" on page 4.)

THE FEDERAL SANCTION

An increasing percentage of Wisconsin's core highway funds will be withheld each year the state fails to enact a .08 standard.

- Withholdings will be returned if Wisconsin passes a .08 law within four years of the withholding.
 - For example, if a .08 law were to pass in 2007, withholdings from 2004-2007 would be returned. However if the law were to pass in 2008, the withholdings for 2005-2008 would be returned, but the withholding for 2004 would be permanently lost.
- To avoid the sanction, Wisconsin must enact a .08 law by September 30, 2003.
- To qualify for a Section 163 incentive grant, AND avoid the sanction, Wisconsin must enact a .08 law by July 15, 2003.

FINANCIAL DETAILS

Beginning in 2004, Wisconsin would lose 2% of federal highway funding, with the penalty increasing by two percentage points a year - until it reaches an 8% cap in 2007.

2004 penalty - 2%: \$,871,170

(Note: While the penalty is capped at 8% in 2007, estimates assume average rate of growth in funding, resulting in higher figure as the penalty continues in 2008 and later years.)

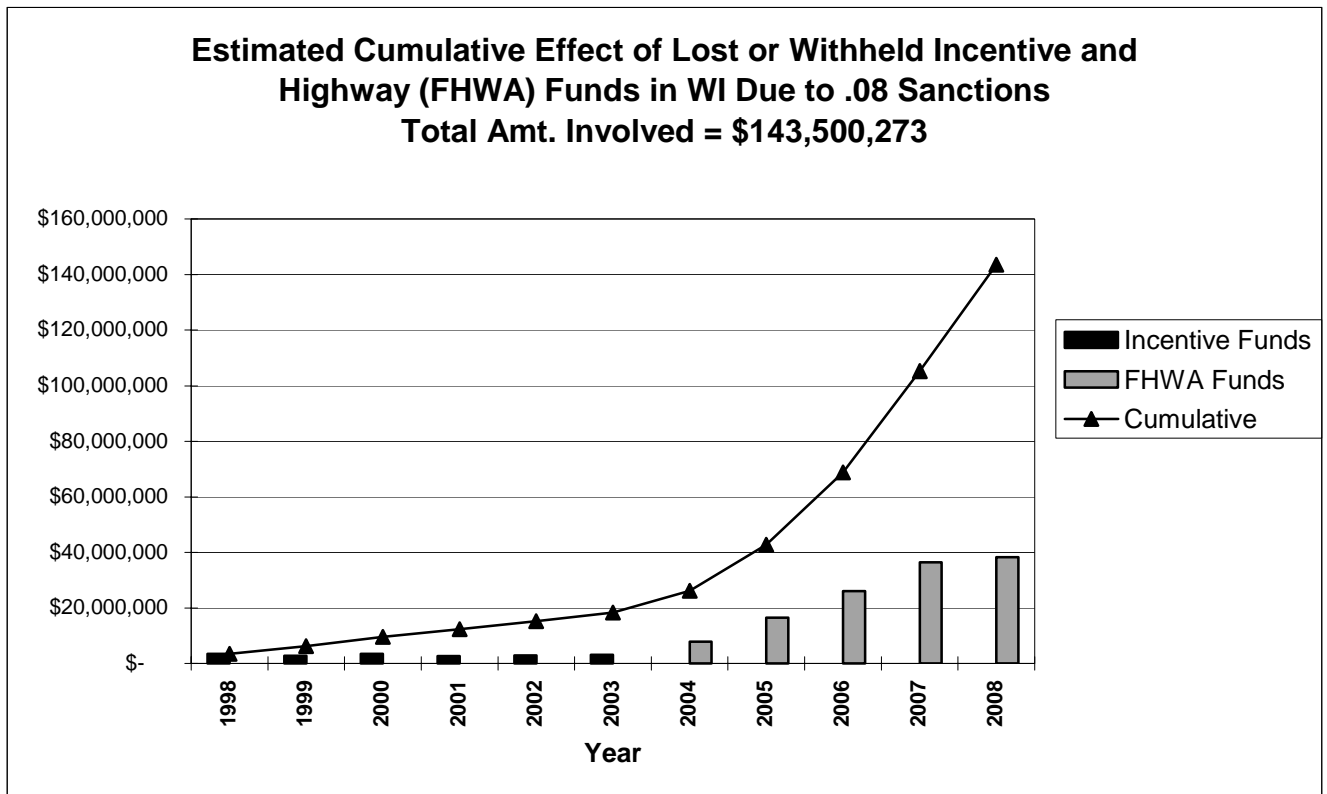
2005 penalty - 4%: \$16,529,456

2006 penalty - 6%: \$26,033,893

2007 penalty - 8%: \$36,447,450

2008 penalty - 8%: \$38,270,000

- Estimated potential loss of highway funds (2004-2008): **\$125,151,969**
- Incentive funds *no longer available* (1998-2002): **\$ 3,169,055**
- Incentive funds still available (2003): **\$ 15,179,249**
- Total potential loss of funds (1998-2008): **\$143,500,273**



AGGRESSIVE DRUNK DRIVING LAWS ALREADY IN PLACE IN WISCONSIN

- Wisconsin law sets a limit of .08 for a third OWI offense. For fourth and subsequent OWI offenses, the standard is more stringent: any level “more than .02.” For some violators, such as commercial drivers and drivers under age 21, the standard is absolute sobriety.
- OWI laws in Wisconsin provide a structure of increasing penalties for repeat offenders and for those with high blood alcohol levels, or those with a minor child in the vehicle.
- Wisconsin law prohibits deferred prosecution for impaired driving violations, which helps account for the 92% conviction rate for those arrested and prosecuted. Statutes also prohibit prosecutors from dismissing or reducing OWI charges without a judge’s written approval.

POTENTIAL IMPACT OF .08 ON LAW ENFORCEMENT EFFORTS

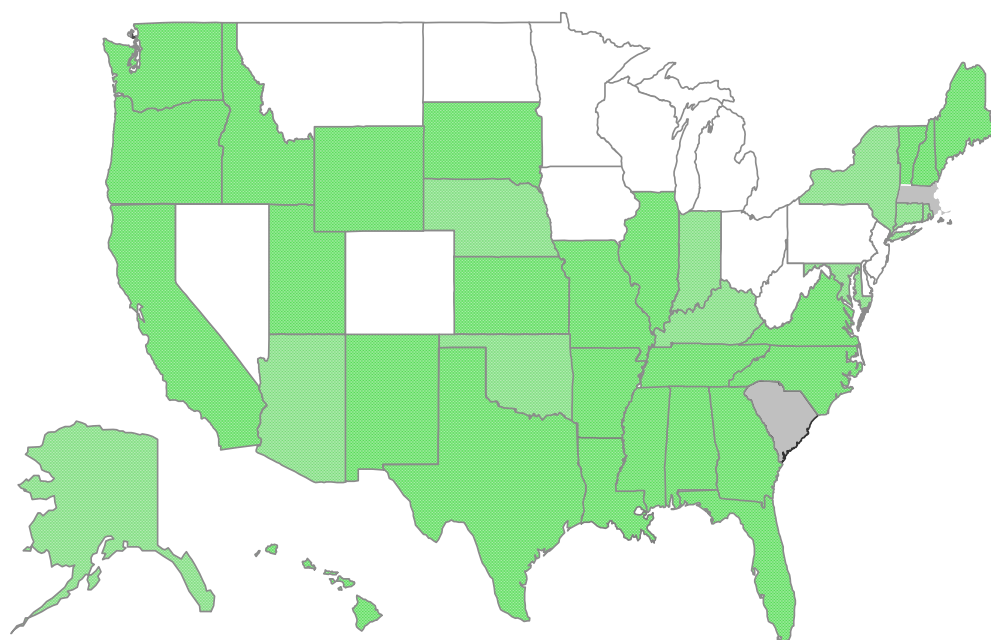
- Officers would not necessarily stop more people for suspicion of OWI. Law enforcement officers in Wisconsin already have authority to arrest and cite motorists for impaired driving if they suspect a person has been drinking, even if the alcohol concentration is below .10.
- Of the 37,077 people arrested for OWI in 2001, 990 (2.7%) tested at a level of .08 or .09. (These figures do not include drivers stopped but not arrested, who may have been in the .08 and .09 range.) An increase in the OWI conviction rate is one possible result of a .08 law.
- The Division of State Patrol estimates a one-time cost for breath testing equipment, software and re-programming (approximately \$30,000) as well as other administrative expenses. Rewriting administrative rules and other training costs would be absorbed within existing resources. There could be added personnel costs if additional court testimony is needed.


EFFECT ON THE SOCIAL DRINKER

- .08 does not target the average social drinker who may have a couple of drinks after work or a glass or two of wine with dinner.
- The median alcohol concentration is .17 for people arrested for OWI and who test positive for alcohol in their system. In 2001, 82% of those arrested and tested were at .10 or above.


BENEFIT TO WISCONSIN CITIZENS

- Scientific studies show that drivers are impaired at .08. Braking, steering, lane changing, speed control and attentiveness are all compromised at this level.
- .08 would help save lives. Wisconsin had 304 alcohol-related fatalities in 2001. U.S. DOT estimates that 8% of those, or 24 lives, could have been saved in 2001 with a .08 limit.
- Passage of .08 would maintain Wisconsin's full share of federal highway aids and would make the state eligible to apply for additional incentive funding.



 0.08 Limit (35 states¹, plus D.C and Puerto Rico)

 0.10 Limit (13 states)

 No Per Se Law (2 states)
Massachusetts, S. Carolina

U.S. PER SE BAC LIMITS (As of 1/6/03)

¹Louisiana and Tennessee have .08 laws that will go into effect 9/30/03 and 7/1/03 respectively; Rhode Island enacted a law in July 2000, which does not comply with the Section 163 requirements.

February 19, 2003